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CONCORD, N.H.

May 23, 1958

James J. Barry, Commissioner
Public Welfare Department
State House Annex
Concord, New Hampshire

Re: Morris Higgins, Pending OAA

Dear Mr. Barry:

This is in reply to your letter of May 19, 1953 in which you request our opinion as to the present settlement of the above-named individual.

You have provided us with the following history of residence:

Farmington -	Feb. 1942 - June 1948
Center Conway -	June 1948 - Oct. 1950
Center Harbor (Twin Gates Nursing Home)	Oct. 28, 1950 - Mar. 30, 1954
Conway -	Mar. 30, 1954 to the present.

You also advise that Mr. Higgins received old age assistance from December 30, 1948 to October 30, 1954, and that at the time he established eligibility for assistance he was a legal liability of the Town of Farmington.

It thus appears that Mr. Higgins had a settlement in Farmington by virtue of five years continuous domicile in that town. RSA 164:1 IX.

RSA 164:2 provides that a former settlement shall be lost upon the abandonment for five consecutive years of the domicile by which the settlement was gained. Since Mr. Higgins abandoned his Farmington domicile nearly ten years ago and has not taken up residence there since, it follows that he has lost his settlement in Farmington.

The residence record submitted by you shows that Mr. Higgins has not resided in any one place for a period of five consecutive years since he abandoned his Farmington domicile in June, 1948. Accordingly on

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Public Welfare Department

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the basis of the information contained in your letter, it is our opinion that Mr. Higgins has no settlement in any town and that the County of Carroll is the political subdivision properly chargeable for a share of the assistance grant under the provisions of RSA 167:1B.

In arriving at this conclusion we were not unmindful of RSA 54:10 which provides in part that "A residence acquired by any person in any town shall not be interrupted or lost by a temporary absence therefrom, with the intention of returning thereto as his home." This section appears in the chapter relating to qualification of voters and we express no opinion as to whether said section would be applicable in determining questions of domicile for settlement purposes. The question of whether or not an absence is "temporary" within the meaning of said section is primarily one of fact. McGee v. Bragg, 94 N.H. 349. Assuming said section to be applicable to settlement cases, it is our opinion that Mr. Higgins' absence from Conway while in the nursing home in Center Harbor, extending as it did for a period of nearly three and one-half years, was not a "temporary" absence and thus prevented him from gaining a settlement in Conway.

Very truly yours,

George T. Ray, Jr.
Assistant Attorney General

GTR,Jr/m

P.S. I would call your attention to the fact that if Mr. Higgins continues to have his domicile in Conway he will gain a settlement in that town on March 30, 1959, because the receiving of old age assistance will not prevent him from gaining a settlement. (See RSA 167:1)

G.T.R.Jr.